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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,518

05/25/2005

Patrick Jeff Crowley

70126

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26748 7590 03/08/2007
SYNGENTA CROP PROTECTION, INC.
PATENT AND TRADEMARK DEPARTMENT
410 SWING ROAD
GREENSBORO, NC 27409

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/536,518

Applicant(s)

CROWLEY ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12/21/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 19-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 19-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

- I. Rejection of claim 14 under 35 USC 112, 2nd paragraph will not be maintained in light of amendment filed 12/21/06. Claim 14 has been canceled. In fact claims 1-18 have been cancelled.
- II. Rejection of claims 1-4,6-8,10,15,16,18 under 35 USC 102(b) as being anticipated by Baker '977 and claims 1-9,15,16,18 under 35 USC 102(b) as being anticipated by Baker '423 will not be maintained in light of amendment filed 12/21/06. The claims have been cancelled. Baker '977 anticipates new claims 19-22,25-28,30 and 32, as did previous claims 1-4,6-8,10,15,16,18 and Baker '423 anticipates new claims 19,21-28,30,32, as did previous claims 14-9,15,16,18 The new claims are rejected for reason on record and reason as follows.
 - A) Applicant argues:
 1. New claims have been amended to provide only for fungicidal methods of using compounds of formula I. While the Examiner has noted that active compounds are disclosed as herbicides in USPNS '977 and '423.
 2. The claims are limited to having at least 60% fungal control, which prevents Baker from reading on the instant claims. The Baker references do not indicate any fungal control, especially a 60% control against fungi.
 - B) Examiner argues:

1. Both Baker USPNs ' 977 and '423 teach a method having the same active as instantly claimed method, i.e., the step of applying the same active ingredient to seeds, plants or soil. The amount of active being applied in the Baker's references is encompassed by the instant amount active of being applied. For this reason Baker teaches an amount that is fungicidally effective and since the active step in the Baker's references is the same as the active step in the instant claims, i.e. applying the active to seed, plants, or soil, Baker does anticipate the instant invention of controlling fungal growth. Therefore, although Baker does make mention of insecticidal or herbicidal control but does not make mention fungicidal control, it is inherent that Baker's invention inherently controls fungi growth for the above reasons. Because the active step in Baker is the same as the active step in the instant invention and the amount of active being applied in Baker is encompassed by the amount instantly claimed; it is inherent that Baker's invention, like instant invention, would control fungi growth.
- III. Rejection of claims 11-13,17 under 35 USC 103(a) as being obvious Baker will not be maintained in light of amendment filed 12/21/06. The claims have been cancelled. Baker makes obvious new claims 20,29,31, as did previous claims 20,29, 31. The new claims are rejected for reason on record and reason as follows. See argument above for 102(b) rejection. With respect to the seed type,

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the Baker's USPN '423 teach applying the actives to plant seed broadly which encompasses the specific plant seeds claimed. Absent a showing that the actives are more effective on claimed seeds versus unclaimed seeds, Baker 's invention makes instantly claimed seeds obvious.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor
Primary Examiner
AU 1616